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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MIRAJ MOSTAFA

Appeal 2008-3482
Application 09/920,910
Technology Center 2400

Decided¹: April 10, 2009

Before JAMES D. THOMAS, JOHN C. MARTIN, and
STEPHEN C. SIU, *Administrative Patent Judges*.

Opinion for the Board filed by Siu, *Administrative Patent Judge*.

Opinion Concurring filed by MARTIN. *Administrative Patent Judge*.

SIU, *Administrative Patent Judge*.

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 21-59. Claims 1-20 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

The Invention

The disclosed invention relates generally to streaming data in a Multimedia Messaging Service (Spec. 1).

Independent claim 21 is illustrative:

21. A wireless multimedia messaging method comprising:
receiving by a messaging server content including a streamable media component and information describing the streamable media component;
sending the information describing the streamable media component from the messaging server to a recipient wireless terminal;
and
forming a streaming session between the messaging server and the recipient wireless terminal, using the information describing the streamable media component, wherein the streamable media component is constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal.

The References

The Examiner relies upon the following references as evidence in support of the rejections:

Broussard	US 6,269,483 B1	Jul. 31, 2001
Luzeski	US 6,430,177 B1	Aug. 6, 2002 (filed Jun. 9, 1998)
Parasnus	US 6,728,753 B1	Apr. 27, 2004 (filed Nov. 1, 1999)

The Rejection

The Examiner rejects claims 21-59 under 35 U.S.C. § 103(a) as being unpatentable over Luzeski, Parasnus, and Broussard.

ISSUE

Appellants assert that “Luzeski cannot disclose or suggest receiving by a messaging server content including a streamable media component. . . .” (App. Br. 11) and “. . . sending information describing such a streamable media component” (*id.*) because “the streamable media component is explicitly defined [in the claims] as being presentable to a recipient while being transmitted” (*id.*). Appellants also argue that “Parasnus fails to disclose or suggest the features missing from Luzeski” (App. Br. 13) and “Broussard fails to disclose or suggest the features missing from Luzeski and Parasnus.” (*Id.* at 14.)

The Examiner finds that Luzeski discloses “receiving a streamable media component,” (Ans. 11) and that Parasnus discloses “presenting the streamable media component to the recipient while it is still being transmitted” (*id.*).

Did Appellants demonstrate that the Examiner erred in finding that the combination of Luzeski, Parasnus, and Broussard discloses or suggests receiving and sending a streamable media component, which is presentable to a recipient while being transmitted?

FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

1. Luzeski discloses “an application designed to receive information from content providers, format information into multimedia containers and distribute these containers . . . ” (col. 5, ll. 48-51) and the “messaging platform” delivering “multimedia content message to the addressed recipient.” (col. 18, ll. 33-34).
2. The multimedia content of Luzeski includes, for example, “audio, graphics . . . , and video” (col. 3, l. 9).
3. Luzeski also discloses a “text-note field be used to carry instructions relating to presentation and management of the content . . . ” (col. 17, ll. 8-10) and “attachment structures [that] contain information about an attachment.” (col. 17, ll. 19-20).
4. Parasnus discloses that multimedia data includes data “in streaming format technology [that] have made it possible to receive audio and video content” (col. 2, ll. 36-37).

PRINCIPLES OF LAW

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; and (3) the level of ordinary skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1739 (2007).

ANALYSIS (ISSUE #1)

Since Appellants' arguments have treated claims 21-59 as a single group which stand or fall together, we select independent claim 21 as the representative claim for this group. *See 37 C.F.R. § 41.37(c)(1)(vii).*

As set forth above, Luzeski discloses receiving and sending multimedia content (including audio and video data) with information describing the multimedia content (e.g., instructions relating to presentation and management of the content) (FF 1-3). Hence, following the teachings of Luzeski, one of ordinary skill in the art would have received and sent multimedia content or data (including, for example, audio and video data) with information describing the content (e.g., instructions relating to presentation and management of the content).

Also as described above, Parasnus discloses audio and video data as including streaming data (FF 4) that, according to Parasnus, "allows content to be continuously 'streamed' . . . over a network rather than being first downloaded as a file" (col. 2, ll. 40-42) and therefore is presentable to a recipient while transmitted to the recipient.

We agree with the Examiner that it would have been obvious to one of ordinary skill in the art to send/receive multimedia content or data (Luzeski), where the multimedia data includes streaming audio/video multimedia content (Parasnus) because such a combination would have merely entailed the rearrangement of known elements to achieve a predictable result of transmission and receipt of multimedia data.

Appellant does not contest the combinability of the Luzeski, Parasnus, and Broussard references but argues that "the streamable media component is explicitly defined [in the claims] as being presentable to a recipient while

being transmitted” (App. Br. 11). As set forth above, we find that Parasnus discloses streaming media content, which is presentable to a recipient while being transmitted. Therefore, we disagree with Appellant’s assertion. Similarly, we disagree with Appellant’s argument that “Parasnus fails to disclose or suggest the features missing from Luzeski.” (App. Br. 13) for reasons set forth above.

For at least the aforementioned reasons, we conclude that Appellant has not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of claim 21-59.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has failed to demonstrate that the Examiner erred in finding that the combination of Luzeski, Parasnus, and Broussard discloses or suggests receiving and sending a streamable media component, which is presentable to a recipient while being transmitted.

DECISION

We affirm the Examiner’s decision rejecting claims 21-59 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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MARTIN, *Administrative Patent Judge*, concurring.

I am writing separately to express my agreement with the Examiner’s rationale for obviousness, which I understand to be based on the message headers in Luzeski’s inbox rather than on Luzeski’s text-note fields, relied on by the Majority. In addition, I point out that Appellant has not explained why it would have been unobvious to apply the Parasnis teaching relied on by the Examiner to Luzeski’s express teaching of streaming voice and fax data.

A. The Luzeski Reference

Each of Luzeski’s multimedia containers comprises a message portion and an attachment portion having associated title, type and filename fields, each of which is used in a predefined manner. Luzeski, col. 4, ll. 25-28. “The message portion, for example, is preferably characterized by a message type field and a corresponding predefined set of message type definitions; a predefined use of the subject field; and a predefined structure for the text-note field.” *Id.*, col. 4, ll. 28-32. “[A]ll content is preferably carried in the attachment portion via a pointer in the filename field.” *Id.*, col. 4, ll. 35-37. “Preferably, only one type of content, either audio, text, HTML, or graphics, is used per attachment; and the filename field is used to contain pointers to objects, including a Uniform Resource Locator (URL).” *Id.*, col. 4, ll. 35-40.

After a subscriber successfully logs on to the system (*id.*, col. 19, l. 44 to col. 20, l. 4), the subscriber’s “inbox” is displayed, thereby presenting a message header list to the subscriber. *Id.*, col. 20, ll. 29.

When a subscriber clicks on a voice or fax message to open it, the Logon ID and URL for the message are passed to the Web Server 14, which passes the Logon ID and URL information to the Session Manager 10-5. *Id.*, col. 20, ll. 55-62. The Session Manager 10-5 validates the session and, if valid, passes the request to the Voice Message Management Module (VMMM) component of VNMS, which retrieves the message from the Voice and Fax Data File in segments and passes the segments on individually to the Session Manager 10-5. *Id.*, col. 20, l. 63 to col. 21, l. 1. As each segment is received, the Session Manager 10-5 passes it on to the Web server 14, which in turn passes each received segment to the NAP Web Plug-in on the subscriber's PC. *Id.*, col. 21, ll. 6-9. These steps are repeated until all message segments have been passed to the plug-in, at which time the plug-in plays or displays the voice or fax data. *Id.*, col. 21, ll. 9-12.

As noted by Appellant (Br. 13), Luzeski specifically discloses streaming. Streaming of voice and fax data both into and out of the VMMM Voice/Fax Store 10-9 is accomplished with the Web Server 14 which calls Session Manager 10-5 as a CGI library using the CGI_Session_Manager entry point. *Id.*, col. 12, ll. 27-32. When the Session Manager CGI interface receives a request, it calls a procedure Stream_Voice_Fax_Data, which extracts the encrypted VMMM message reference (previously obtained via a ReadMessage function call) from the incoming request. *Id.*, col. 12, ll. 39-43. The reference is decoded and the timestamp checked for expiration. *Id.*, col. 12, ll. 43-44. If the reference has not expired, the procedure GetVMMMBlob is called in the VMMM 10-8 interface library to stream the data back to the plugin via the Web Server. *Id.*, col. 12, ll. 44-47.

After recording a voice message, the plugin streams data to the Session Manager which invokes a procedure called Accept_Voice_Fax and then calls the VMMM 10-8 interface library to store the data. *Id.*, col. 12, ll. 48-51. Thereafter, the mailbox is checked and UVMS 10-7 is called to compose the message. *Id.*, col. 12, ll. 51-53.

B. Analysis

The Examiner reads the step of “sending the information describing the streamable media component from the messaging server to a recipient . . . terminal” on Luzeski’s above-noted disclosure (*id.*, col. 20, ll. 7-29) of displaying the subscriber’s inbox including a message header list. Answer 3, para. 2a. The Examiner concedes that Luzeski fails to disclose a “wireless” recipient terminal and relies on Broussard for such a teaching. *Id.* at 4-5. Appellant does not dispute the Examiner’s reliance on Broussard for this teaching. Appellant does not deny that Luzeski’s message headers for streaming fax and voice data constitute “information describing the streamable media component.” Nor does Appellant deny that these voice and fax message headers are used to form a streaming session between the messaging server and the recipient terminal, as required to satisfy claim 21.

Instead, Appellant correctly points out (Br. 11-13) that Luzeski’s streaming is not the type of streaming required by the claim, which specifies that “the streamable media component is constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal.” The Examiner (Answer 6) agrees and relies on Parasnus for such a teaching, quoting Parasnus’s “Background of the Invention” statements that “[a]s opposed to

conventional network file transfer schemes, streaming format technology allows content to be continuously ‘streamed’ to one or more computers over a network rather than being first downloaded as a file” (col. 2, ll. 39-42) and “recent advancements in streaming format technology have made it possible to receive audio and video content via live broadcasts over the Internet and other networks environments” (col. 2, ll. 35-39). Based on these teachings, the Examiner concluded (Answer 6) that it would have been obvious to modify Luzeski to employ Parasnus’s type of streaming, which the Examiner characterizes as “presenting the streamable media component to the recipient while it is still being transmitted.” *Id.* at 11.

As already noted, Appellant has acknowledged (Br. 13) that Luzeski teaches providing “streaming” fax and voice data to the plugin via the web server (Luzeski, col. 12, ll. 27-47). Although not stated by the Examiner, who did not specifically rely on that Luzeski teaching, the effect of applying Parasnus to that Luzeski teaching will be to reproduce (i.e., display or play) the “streaming” fax and voice data *while* the message segments are being received instead of waiting until all of the message segments have been received, as disclosed in Luzeski (*id.*, col. 21, ll. 9-12). The motivation to make this modification therefore would have been to reduce the delay in reproducing Luzeski’s “streaming” fax and voice data.

Appellant has not explained why it would not have been obvious to combine the reference teachings in the above manner. Instead, Appellant faults Parasnus for failing to disclose claimed features that Appellant does not deny are disclosed in Luzeski. For example, Appellant argues that “Parasnus fails to disclose or suggest receiving by a messaging server content including a streamable media component and information describing the

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streamable media component" (Br. 13-14) and "Parasnus does not receive a streamable component as defined by the claims, but encodes a set of slides into an advanced server file stream format only during presentation." *Id.* at 13.

I also note that in view of Luzeski's disclosure of streaming fax and voice data in column 12, lines 27-58, it is not necessary to address the Examiner's reliance (Answer 11-12) on columns 3, 17, 24, and 25 of Luzeski for a teaching of streaming audio and video or Appellant's arguments in response thereto. Reply Br. 4-5.

For the foregoing reasons, I join the Majority in affirming the rejection of claim 21 and the rejection of the other appealed claims, which are not separately argued.

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